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Attorneys for Plaintiff
SANDISK CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SANDISK CORPORATION, a Delaware
corporation,

Plaintiff,

v.

AUDIO MPEG, INC., a Virginia
corporation; U.S. PHILIPS
CORPORATION, a Delaware corporation;
FRANCE TÉLÉCOM, a French
corporation; TÉLÉDIFFUSION DE
FRANCE S.A., a French corporation;
INSTITUT FÜR RUNDFUNKTECHNIK
GMBH, a German corporation,

Defendants.

Case No. CV 06-02655 RMW

PLAINTIFF SANDISK CORPORATION'S
MOTION FOR ADMINISTRATIVE RELIEF
PURSUANT TO NORTHERN DISTRICT
LOCAL RULE 7-11 SEEKING EXPEDITED
DISCOVERY IN CONNECTION WITH
DEFENDANTS' MOTION TO DISMISS

Judge: Honorable Ronald M. Whyte

Motion to Dismiss

Date: December 1, 2006

Time: 9:00 a.m.

Dept: Courtroom 6

1 **I. INTRODUCTION**

2 Defendants Audio MPEG, TDF, and IRT assert that they are not subject to this Court's
3 jurisdiction and have filed a motion that asks the Court to dismiss them from this action for lack
4 of personal jurisdiction.¹ Plaintiff SanDisk Corporation opposes that motion and believes the
5 evidence already before the Court amply demonstrates that Audio MPEG, TDF and IRT are, in
6 fact, subject to jurisdiction in this Court. In the event the Court determines that the pending
7 motion can better be addressed and resolved with reference to additional facts not yet in the
8 record, however, SanDisk requests leave to take expedited discovery in connection with the
9 personal jurisdiction issues, and to a very limited extent the subject matter jurisdiction issues,
10 raised by the defendants' motion to dismiss.

11 The discovery SanDisk seeks is narrowly focused. SanDisk primarily seeks evidence
12 relevant to the defendants' claim that their contacts with this jurisdiction are so minimal as to put
13 them beyond the reach of this Court. This is information the defendants have so far refused to
14 provide voluntarily.² Because the defendants alone are in possession of information that would
15 establish the exact extent of their contacts in California (particularly with respect to the exact
16 amount of revenue they derive from California companies), good cause exists for this Court to
17 exercise its broad discretion and grant the administrative relief SanDisk seeks by ordering the
18 requested expedited discovery.

19 **II. ARGUMENT**

20 **A. Limited Expedited Discovery Will Reinforce The Existing Evidence That The**
21 **Court Has Personal Jurisdiction Over Audio MPEG, IRT, and TDF**

22 In the event the Court determines that additional evidence is needed concerning whether
23 the Court has personal jurisdiction over Audio MPEG, IRT, and TDF, SanDisk is prepared to take

24 _____
25 ¹ The defendants filed their Motion to Dismiss on October 23, 2006 and SanDisk filed its opposition on
26 November 9, 2006. In the Motion to Dismiss, all five defendants moved to dismiss this action for lack of
27 subject matter jurisdiction. Defendants Audio MPEG, TDF and IRT also seek a dismissal for lack of
28 personal jurisdiction. (U.S. Philips Corporation and France Telecom submit to the jurisdiction of this
Court.) This administrative requests pertains only to the portion of the motion in which Audio MPEG,
TDF and IRT seek to be dismissed for lack of personal jurisdiction.

² SanDisk sent Defendants a letter on October 31, 2006 requesting expedited discovery in connection with
their Motion to Dismiss. In a letter sent the next day, Defendants rejected SanDisk's request.

1 limited, expedited discovery of certain documents and individuals that it believes will establish
2 such contacts beyond any possible doubt.

3 In California, personal jurisdiction is coextensive with the United States Constitution. Cal
4 Civ. Proc. Code § 410.10. Thus, personal jurisdiction can be established through showing
5 Defendants have minimum contacts with California. Through discovery, SanDisk will establish
6 minimum contacts by showing *inter alia* that the defendants extract tens of millions of dollars
7 from Northern California businesses every year.

8 To this end, SanDisk respectfully requests this Court to order Defendants to produce
9 documents and answer interrogatories itemized in the attached proposed First Set of Requests for
10 Production of Documents and First Set of Interrogatories. As the Court can see from reviewing
11 these requests, they are narrowly tailored and relate to 1) any licensing agreement, contract, or
12 negotiation between Defendants and a California entity; 2) royalties paid to Defendants by any
13 California entity; 3) communications between Defendants and any California entity; 4)
14 Defendants' policy relating to licensing patents in California; 5) indemnification of, offer to
15 indemnify or request for indemnification by any California entity; 6) attendance at trade shows in
16 California by Defendants' personnel; 7) marketing or advertising in California by Defendants; 8)
17 Defendants' market study, reports or analyses relating to licensing to California entities; 9)
18 Defendants' financial statements, balance sheets, income statements, earnings statements, cash
19 flow statements, ledgers, and other accounting documentation relating to licensing to California
20 entities; 10) notification by Defendants of any California entity of infringement of any patent; and
21 11) Defendants' business meetings and correspondence with California entities in the course of
22 negotiating licenses. (In addition, a single request relates to subject matter jurisdiction.)

23 Following the answering of interrogatories and production of documents, SanDisk will
24 seek a short deposition of Audio MPEG's declarant General Richard Neal to authenticate Audio
25 MPEG's documents, explain any issues or uncertainty in connection with them, and answer
26 questions focusing primarily on the scope of Audio MPEG's dependence on California licensees.

1 **B. This Court Has Broad Discretion To Order Limited Expedited Discovery**

2 The district court has "broad discretion" to grant discovery where pertinent facts bearing
 3 on jurisdiction are controverted or where a more satisfactory showing of facts is necessary. *Data*
 4 *Disc, Inc. v. Sys Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977); *see also Am. West*
 5 *Airlines, Inc. v. GPA Group, Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989) ("It is clear that the question
 6 of whether to allow discovery is generally within the discretion of the trial judge. *Id.* However,
 7 where pertinent facts bearing on the question of jurisdiction are in dispute, discovery should be
 8 allowed."). To determine whether expedited discovery is warranted, this District Court has ruled
 9 that a good cause standard applies. *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D.
 10 273 (N.D. Cal. 2002). In *Semitoool*, twenty one days prior to a Rule 26(f) conference, Plaintiff
 11 filed a motion for expedited discovery requesting, *inter alia*, technical documents and an
 12 inspection of defendant's facilities. *Id.* at 274-75. Judge Chen held that good cause existed for
 13 permitting limited expedited discovery, because: 1) the requested documents were central to the
 14 underlying case; 2) expedited discovery would also expedite the case to trial; 3) defendant was on
 15 notice of the need for such discovery; 4) the documents were not otherwise accessible; 5) the
 16 parties were sophisticated; and 6) the requests were narrowly tailored. *Id.* at 276-77.

17 The good cause standard was again applied in *UMG Recordings, Inc., v. Does 1-4*, 2006
 18 U.S. Dist. LEXIS 32821 (N.D. Cal. 2006), to allow expedited discovery. In *UMG Recordings*,
 19 plaintiff did not know the names of four Doe Defendants but identified them by a unique Internet
 20 Protocol address. *Id.* at **2. Citing *Semitoool*, Judge Chen held that expedited discovery
 21 outweighed any prejudice to the Doe Defendants, reasoning in part that the information was
 22 necessary to advance the lawsuit to trial. *Id.* at **3-4. *See also Orchid Biosciences, Inc. v. St.*
 23 *Louis Univ.*, 198 F.R.D. 670, 673-75 (S.D. Cal. 2001) ("Courts are afforded a significant amount
 24 of leeway in deciding whether parties may conduct discovery relating to jurisdictional issues
 25 while a motion to dismiss is pending;" ordering limited jurisdictional discovery to assess
 26 defendants' licensing activities in California).

1 **C. Good Cause Exists for Expedited Jurisdictional Discovery**

2 In this case, the Court should similarly find that expedited discovery is warranted. First,
3 the documents requested by SanDisk are central to the underlying case. The documents are
4 relevant not only to establishing minimum contacts, but also to the larger issue of infringement
5 and damages. Second, expedited discovery is necessary to efficiently advance this lawsuit to trial
6 because, without disclosure of the documents necessary to sufficiently prove personal
7 jurisdiction, this litigation cannot proceed. Third, Defendants have been on notice that this
8 discovery would be requested -- on October 31, 2006, SanDisk requested discovery in connection
9 with the motion to dismiss. Fourth, the requested documents are not otherwise accessible to
10 SanDisk.

11 Fifth, the parties are sophisticated corporations with the resources to adequately provide
12 the requested discovery. Defendants TDF and IRT entered into patent pooling agreements, which
13 assigned the right to license the patents to Audio MPEG. Audio MPEG exploited those rights by
14 demanding California businesses to take licenses under them, such as in the August 8, 2005, letter
15 SanDisk received from Sisvel S.p.A., Audio MPEG's parent company. Thus, Defendants'
16 litigious business model shows that they are also sophisticated in trial matters. Finally, the
17 discovery requested by this Motion is narrowly tailored. Each interrogatory and document
18 request is directed to discovery of information concerning defendants' contacts with California
19 entities, with one request addressed to subject matter jurisdiction.

20 **III. CONCLUSION**

21 The Court should grant SanDisk's Motion.

22
23 Dated: November 15, 2006

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Peter P. Chen

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UNITED STATES DISTRICT COURT
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SAN JOSE DIVISION

SANDISK CORPORATION, a Delaware
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Plaintiff,

v.

AUDIO MPEG, INC., a Virginia
corporation; U.S. PHILIPS
CORPORATION, a Delaware corporation;
FRANCE TÉLÉCOM, a French
corporation; TÉLÉDIFFUSION DE
FRANCE S.A., a French corporation;
INSTITUT FÜR RUNDfunkTECHNIK
GMBH, a German corporation,

Defendants.

Case No. CV 06-02655 RMW

SANDISK'S [PROPOSED] FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANTS AUDIO
MPEG, TDF, AND IRT

1 PROPOUNDING PARTY: Plaintiff SANDISK CORPORATION
 2 RESPONDING PARTIES: Defendant AUDIO MPEG, INC.
 3 Defendant TÉLÉDIFFUSION DE FRANCE S.A.,
 Defendant INSTITUT FÜR RUNDFUNKTECHNIK
 4 SET: ONE [REQUESTS 1-14]

5 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff SanDisk
 6 Corporation ("SanDisk"), hereby requests that Defendants Audio MPEG, Inc., Télédiffusion de
 7 France S.A., and Institut für Rundfunktechnik produce the documents described below within 10
 8 days of the service of the order of the Court compelling compliance with this Request.

9 DEFINITIONS

10 1. The terms "Defendant," "you" or "your" shall refer to Defendants Audio MPEG,
 11 Inc., Télédiffusion de France S.A., and Institut für Rundfunktechnik, as well as their past or
 12 present officers, directors, agents, servants, employees, attorneys, accountants, corporate parents,
 13 affiliates, or other persons or entities acting on their behalf for purposes of these requests.

14 2. The term "California Entity" shall refer to any natural person, proprietorship,
 15 association, corporation, partnership, firm, joint venture, sole proprietorship, business agency or
 16 other legal or business organization of any kind doing business in the State of California.

17 3. The term "United States Entity" includes any natural person, proprietorship,
 18 association, corporation, partnership, firm, joint venture, sole proprietorship, business agency or
 19 other legal or business organization of any kind doing business in the United States.

20 4. The terms "Documents" and "Things" are used in the broadest sense consistent
 21 with Rule 34(a) of the Federal Rule of Civil Procedure 34(a) and include tangible objects of any
 22 type, composition, construction or nature, such as models, prototypes and samples of any device
 23 or apparatus, and all drafts, proposals, analyses, and negotiations.

24 5. "And" and "or" shall be construed conjunctively or disjunctively as necessary to
 25 make discovery requests inclusive rather than exclusive.

26 6. Use of a singular noun shall be construed to include the plural noun and use of a
 27 plural noun shall be construed to include the singular noun. The use of a verb in any tense shall
 28

1 be construed as the use of that verb in all other tenses whenever necessary to bring within the
2 scope of the discovery request documents or information that might otherwise be construed to be
3 outside its scope.

4 7. "Relating" means referring to, concerning, pertaining to, describing, mentioning,
5 evidencing or constituting.

6 **REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

7 **REQUEST NO. 1:**

8 All licensing or sublicensing agreements, between you and any California Entity.

9 **REQUEST NO. 2:**

10 All licensing or sublicensing agreements, between you and any United States Entity.

11 **REQUEST NO. 3:**

12 Documents sufficient to determine the annual revenue derived by you from licensing or
13 sublicensing agreements with California Entities.

14 **REQUEST NO. 4:**

15 Documents sufficient to determine the annual revenue derived by you from licensing or
16 sublicensing agreements with United States Entities.

17 **REQUEST NO. 5:**

18 To the extent not covered by previous requests, documents sufficient to identify any
19 California Entity that is a party to any licenses, contracts, or agreements with you.

20 **REQUEST NO. 6:**

21 To the extent not covered by previous requests, all documents and things relating to any
22 discussions, negotiations or agreements between you and any California Entity.

23 **REQUEST NO. 7:**

24 All communications between you and any California Entity relating to any technology or
25 intellectual property licenses, contracts, agreements, or negotiations.

26 **REQUEST NO. 8:**

27 All documents relating to your policy, strategy, plan, or practice (whether formal or
28 informal, stated or unstated) relating to licensing patents in California, including, but not limited

1 to, licensing or cross-licensing your patents to California Entities, marketing your patented
2 technology in California, protecting your intellectual property in California, and/or threatening
3 California Entities with patent infringement actions.

4 **REQUEST NO. 9:**

5 All documents and things relating to attendance of any trade show in California by any of
6 your personnel.

7 **REQUEST NO. 10:**

8 All documents and things which relate to your promotion or marketing of licensing of
9 technology or intellectual property to California Entities.

10 **REQUEST NO. 11:**

11 All documents that relate to your participation in any proceedings or related activity of the
12 ISO/IEC MPEG organization in California.

13 **REQUEST NO. 12:**

14 All documents relating to any business travel by any of your personnel to California in the
15 past 5 years. (For the purpose of this request, "business travel" means travel where at least part of
16 the purpose of the travel was to promote or facilitate licensing of technology or intellectual
17 property to any potential licensee in California.)

18 **REQUEST NO. 13:**

19 All documents relating to oral or written notification to any California Entity by
20 Defendants of infringement or possible infringement of any patent.

21 **REQUEST NO. 14:**

22 All documents constituting or otherwise relating to assurances by any defendant to
23 SanDisk that it would not be sued on any of defendants' so-called "non-essential" patents.
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27
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Dated: November 15, 2006

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Attorneys for Plaintiff
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UNITED STATES DISTRICT COURT
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SANDISK CORPORATION, a Delaware
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AUDIO MPEG, INC., a Virginia
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FRANCE S.A., a French corporation;
INSTITUT FÜR RUNDFUNKTECHNIK
GMBH, a German corporation,

Defendants.

Case No. CV 06-02655 RMW

SANDISK'S [PROPOSED] FIRST SET OF
INTERROGATORIES TO DEFENDANTS
AUDIO MPEG, TDF, AND IRT [NOS. 1-5]

1 PROPOUNDING PARTY: Plaintiff SANDISK CORPORATION
 2 RESPONDING PARTIES: Defendant AUDIO MPEG, INC.
 3 Defendant TÉLÉDIFFUSION DE FRANCE S.A.,
 Defendant INSTITUT FÜR RUNDfunkTECHNIK
 4 SET: ONE [NOS. 1-5]

5 Pursuant to Rule 33 of the Federal Rules of Civil Procedure Plaintiff SanDisk Corporation
 6 ("SanDisk"), hereby requests that Defendants Audio MPEG, Inc., Télédiffusion de France S.A.,
 7 and Institut für Rundfunktechnik answer the following Interrogatories, in writing and under oath,
 8 within 10 days of the service of the order of the Court compelling compliance with this Request.

9 **DEFINITIONS**

10 1. The terms "Defendant," "you" or "your" shall refer to Defendants Audio MPEG,
 11 Inc., Télédiffusion de France S.A., and Institut für Rundfunktechnik, as well as their past or
 12 present officers, directors, agents, servants, employees, attorneys, accountants, corporate parents,
 13 affiliates, or other persons or entities acting on their behalf for purposes of these requests.

14 2. The term "California Entity" shall refer to any natural person, proprietorship,
 15 association, corporation, partnership, firm, joint venture, sole proprietorship, business agency or
 16 other legal or business organization of any kind doing business in the State of California.

17 3. "And" and "or" shall be construed conjunctively or disjunctively as necessary to
 18 make discovery requests inclusive rather than exclusive.

19 4. Use of a singular noun shall be construed to include the plural noun and use of a
 20 plural noun shall be construed to include the singular noun. The use of a verb in any tense shall
 21 be construed as the use of that verb in all other tenses whenever necessary to bring within the
 22 scope of the discovery request documents or information that might otherwise be construed to be
 23 outside its scope.

24 5. "Relating" means referring to, concerning, pertaining to, describing, mentioning,
 25 evidencing or constituting.

26 6. The term "MPEG patent pool" shall refer to the pool of patents related to the
 27 standards identified as ISO/IEC IS 11172-3 and ISO/IEC IS 13818-3 for which Audio MPEG
 28

claims to have the exclusive right to grant licenses in the U.S. and Sisvel claims to have the exclusive right to grant licenses outside the U.S.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify every California Entity that you have communicated with regarding an existing or potential license for any one or more patents in the MPEG patent pool.

INTERROGATORY NO. 2:

Identify every actual licensee for any one or more patents in the MPEG patent pool who you understand is located in, incorporated in, or has its principal place of business in, California.

INTERROGATORY NO. 3:

For each licensee identified in the preceding interrogatory, state the amount (in dollars) of total revenues you have received relating to a license for any one or more patents in the MPEG patent pool.

INTERROGATORY NO. 4:

Identify (by date, participants and purpose) each meeting you have had with any potential or actual licensee for any one or more patents in the MPEG patent pool that occurred in California.

INTERROGATORY NO. 5:

Identify every trade show, industry meeting or other business-related meeting or event you attended in California relating to patents for MPEG technology.

Dated: November 15, 2006

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